Developments in Legal Ethics

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Law is the business to which my life is devoted, and I should show less than devotion if I did not do what in me lies to improve it, and when I perceive what seems to me the ideal of its future, if I hesitated to point out and to press toward it with all my heart.

Justice Oliver Wendell Holmes[1]

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INTRODUCTION

Bouvier's Law Dictionary defines Legal Ethics as, "[t]hat branch of moral science which treats of the duties which a member of the legal profession owes to the public, to the court, to his professional brethren, and to his client."[2] In his Foreword to Malcolm's *Legal and Judicial Ethics*, Chief Justice Moran describes Legal Ethics as "the embodiment of all principles of morality and refinement that should govern the conduct of every member of the bar."[3] These definitions recognize that morality provides the touchstone for ethics. A lawyer owes duties that are both legal and moral. The importance and dignity of the legal profession require not only that its members be law-abiding, but also that they be exemplars of moral uprightness.

I. THE CODE OF PROFESSIONAL RESPONSIBILITY *vis-à-vis* THE CANONS OF PROFESSIONAL ETHICS

Prior to the promulgation by the Supreme Court of the Code of Professional Responsibility (CPR),[4] the tenets of Legal Ethics could be found in the Constitution,[5] statutes,[6] the Rules of Court,[7] Supreme Court decisions, the

1. Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 473-74 (1897).
2. 1 BOUVIER'S LAW DICTIONARY 1086 (8d ed. 1914).
3. Manuel V. Moran, *Foreword* to GEORGE ARTHUR MALCOLM, LEGAL AND JUDICIAL ETHICS ix (1949).
4. *Reprinted in* 2 LAW. REV., Sept. 30, 1988, at 29.
5. *See* PHIL. CONST., art. VIII, § 5 (c).
6. *See* An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE] art. 1491 provides:

   > The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:
   >
   > ... (5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon execution before the court within whose jurisdiction or territory they exercise their functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which maybe the object of any litigation in which they may take part by virtue of their profession.

   See also An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE]. ART. 208 provides:

   > The penalty of *prision correcional* in its minimum period and suspension shall be imposed upon any public officer, or officer of the law, who, in deriliction of the duties of his office, shall maliciously refrain from instituting prosecution for the punishment of violators of the law, or shall tolerate the commission of offenses.

   Similarly, Article 209 provides:

Canons of Professional Ethics (CPE),[8] treatises, and commentaries.[9] The CPR has codified these tenets, making them systematic and updated.

The CPE was promulgated by the American Bar Association and merely adopted by the Philippine Bar Association in 1917 and 1946. The CPR was originally drafted by the Integrated Bar of the Philippines Committee on Responsibility, Discipline and Disbarment, and submitted to the Supreme Court for approval. The Supreme Court promulgated the same on June 21, 1988.

A. Generally

Compared to the CPE, the CPR is a source of legal ethics more suited to the present landscape of the legal profession. Not only is it attuned to the Philippine setting; it is also better organized. The CPE gave the impression of simply being an accumulation of standards, with new ones being added as time went by. In contrast, the CPR presents the duties of the lawyer according to the universally accepted classification of such duties, namely: (1) duties to the public, (2) duties to the legal profession, (3) duties to the court, and (4) duties to the client.

The canons and rules enunciated in the CPR are not as prolix as those in the CPE. However, the statements of general principles in the former, distilled from jurisprudence, are broad and flexible enough to cover all situations that come about, *e.g.*, "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct,"[10] "a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal

> In addition to the proper administrative action, the penalty of *prision correcional* in its minimum period, or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon any attorney at law or solicitor *(procurador judicial)* who, by any malicious breach of professional duty or of inexcusable negligence or ignorance, shall prejudice his client, or reveal any of the secrets of the latter learned by him in his professional capacity.
>
> The same penalty shall be imposed upon an attorney at law or solicitor who, having undertaken the defense of a client or having received confidential information from said client in a case, shall undertake the defense of the opposing party in the same case, without the consent of his first client.

7. *See* Rules of Court, Rules 130 § 24(b), 138, 139, 139-A, & 139-B.
8. Canons of the American Bar Association, adopted by the Philippine Bar Association in 1917 and in 1946.
9. *See generally*, VI RUPERTO G. MARTIN, RULES OF COURT IN THE PHILIPPINES WITH NOTES AND COMMENTS, (9d. 1988); ERNESTO L. PINEDA, LEGAL AND JUDICIAL ETHICS (1994); RUBEN E. AGPALO, LEGAL ETHICS (1989); SERGIO A. ASPOSTOL, ESSENTIALS OF JUDICIAL AND LEGAL ETHICS (1990).
10. Code of Professional Responsibility, Rule 1.01 (1988).

profession,"[11] "a lawyer owes candor, fairness and good faith to the court,"[12] and "a lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client."[13]

The CPR emphasizes the lawyer's public role of providing legal services to the underprivileged members of society. Canon 2.01 clearly states that "a lawyer shall not reject, except for valid reasons, the cause of the defenseless or oppressed," and Canon 14 repeats that "a lawyer shall not refuse his services to the needy." Should there be a valid reason for a lawyer not to accept the case of a needy person, such as if it will involve a conflict of interests, Rule 2.02 of the CPR points out that the least he can do is to give such person legal advice to the extent that is necessary to safeguard the latter's rights.

The CPR[14] reiterates the proscription in the CPE[15] against stirring up litigation, but it goes a step further by making it the duty of the lawyer to "encourage his clients to avoid and/or settle the controversy if it will admit of a fair settlement."[16] The Supreme Court has pointed out that a lawyer should be a "conciliator for concord and a mediator for compromise" instead of being an "instigator of conflict;" a "true exponent of the primacy of truth and moral justice" instead of a "virtuoso of technicality in the conduct of litigation."[17]

B. Choice of a Firm Name

The second paragraph of Canon 33 of the CPE provides as follows:

> In the formation of partnerships for the practice of law, no person should be admitted or held out as practitioner or member who is not a member of the legal profession, duly authorized to practice and amenable to professional discipline. In the selection and use of a firm name, no false, misleading, assumed or trade name should be used. The continued use of the name of a deceased or former partner, when permissible by local custom, is not unethical, but care should be taken that no imposition or deception is practiced through this use. When a member of the firm, on becoming a judge, is precluded from practicing law, his name shall not be continued in the firm name.

These rules are now reflected in Rules 3.02 and 3.03 of the CPR, thus:

> RULE 3.02. In the choice of a firm name, no false, misleading or assumed name shall be used. The continued use of the name of a deceased partner is permissible provided the firm indicates in all its communication that said partner is deceased.

11. *Id.* canon 7.
12. *Id.* canon 10.
13. *Id.* canon 15.
14. *Id.* canon 1.
15. Canons of Professional Ethics, Canon 28.
16. Code of Professional Responsibility, Canon 1 (1988).
17. Castañeda v. Ago, 65 SCRA 505 (1975).

> RULE 3.03. Where a partner accepts public office, he shall withdraw from the firm and his name shall be dropped from the firm name unless the law allows him to practice law.[18]

The rule allowing the continued use of a deceased partner's name represents a curious twist in the Supreme Court's thinking. In the case of *In the Matter of the Petition for Authority to Continue Use of Firm Name 'Ozaeta, Romulo, etc.'*,[19] the Supreme Court denied petitions for the continued use of the names of deceased partners in firm names. The Supreme Court adverted to a 1953 decision in which it advised two lawyers practicing in Cebu to desist from including in their firm designation the name of a partner who had long been dead, and to a 1958 in which it gave the same advise to a Manila law firm, pointing out that:

> The Court believes that, in view of the personal and confidential nature of the relations between attorney and client, and the high standards demanded in the canons of professional ethics, no practice should be allowed which even in a remote degree could give rise to the possibility of deception. [20]

However, in denying the petitions in the *Ozaeta, Romulo* case, the Supreme Court stated in the dispositive portion of its decision:

> ACCORDINGLY, the petitions filed herein are denied and petitioners advised to drop the names 'SYCIP' and 'OZAETA' from their respective firm names. *Those names may, however, be included in the listing of individuals who have been partners in their firms indicating the years during which they served as such.*[21]

The last sentence has evolved into a general rule and is now embodied in Rule 3.02 of the CPR.

C. *Division of Fees*

A modification has likewise been introduced with regard to the rule on division of fees. Canon 34 of the CPE simply states that "no division of fees for legal services is proper, except with another lawyer, based upon a division of service or responsibility." Rule 9.02 of the CPR now provides that —

> RULE 9.02. A lawyer shall not divide or stipulate to divide a fee for legal services with persons not licensed to practice law, except:
>
> (a) When there is a pre-existing agreement with a partner or associate that, upon the latter's death, money shall be paid over a reasonable period of time to his estate or to the person specified in the agreement; or
>
> (b) Where a lawyer undertakes to complete unfinished legal business of a deceased lawyer; or

18. Code of Professional Responsibility, Canon 3 (1988).
19. 92 SCRA 1 (1979).
20. *Id.* at 7.
21. *Id.* at 14 [emphasis supplied].

> (c) Where a lawyer or law firm includes non-lawyer employees in a retirement plan, even if the plan is based in whole or in part on a profit sharing arrangement.[22]

Indubitably, the reason for the first exception above is that the deceased lawyer, by his services, contributed to the growth of the law firm. The key to the validity of the agreement, however, is the phrase "over a reasonable period of time." The law firm cannot validly share its fees with the family of the deceased partner or associate indefinitely.

The second exception is unclear as to the non-lawyer with whom the lawyer completing the unfinished business will share the fees. Presumably, it is with the family or heirs of the deceased lawyer. The justification for such an arrangement is the same as with the first exception, the services rendered by the deceased lawyer prior to his death. The arrangement is necessarily for a temporary period only because it will be limited to the fees pertaining to the unfinished legal business.

The third exception is obviously based on modern fair employment practices.

D. *Admission to the Bar*

It is noteworthy that the CPR gives importance to the qualifications for admission to the practice of law:[23]

> RULE 7.01. A lawyer shall be answerable for knowingly making false statement or suppressing a material fact, in connection with his application for admission to the bar.
>
> RULE 7.02. A lawyer shall not support the application for admission to the bar of any person known by him to be unqualified in respect to character, education or other relevant attribute.

The inclusion of Rule 7.01 is undoubtedly influenced by the Supreme Court's decision in *In Re Ramon E. Galang,*[24] where a lawyer was disbarred after it was discovered, among others, that he declared under oath in his application to take the Bar examination that he had no pending criminal case in court, when in fact he was then facing a charge for physical injuries.

Rule 7.02, quoted above, is based on the requirement in the Supreme Court that an application for admission to the Bar examinations must be supported by certifications given by three members of the bar that they know the applicant to be a person of good moral character.

22. Code of Professional Responsibility, Rule 9.02 (1988).
23. Code of Professional Responsibility, Canon 7 (1988).
24. *In re* Ramon E. Galang, 66 SCRA 245 (1975).

E. Duties of the lawyer

The CPR has added a new dimension to the duties of the lawyer to the court — the duty to "assist in the speedy and efficient administration of justice."[25] Aside from showing candor and respect to the court, it is the duty of the lawyer, as an officer of the court, to see to it that the court performs its function of administering speedy and efficient justice. The courts cannot function efficiently if the lawyers are not efficient in the presentation of evidence.

Lastly, an interesting sidelight provided by the CPR with regard to the lawyer's duties to his client is Rule 16.04, which provides that:

> A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client. [26]

This is related to the fiduciary responsibility of the lawyer towards his client. As much as possible, he should avoid creating conflict between his interests and those of his client. Trust, after all, is the primary reason for the client's choice of a lawyer. It is due to this trust that the CPR has set standards which should guide the lawyer in serving his client:

> CANON 17. A lawyer owes fidelity to the cause of his client and shall be mindful of the trust and confidence reposed in him.
>
> CANON 18. A lawyer shall serve his client with competence and diligence. [27]

Indeed, the duties of a lawyer, legal and moral, may be reduced to just one word: *fidelity*. "Fidelity to the court, fidelity to the client, fidelity to the claims of truth and honor; these are the matters comprised in the oath of office."[28]

II. SIGNIFICANT JURISPRUDENCE AFTER THE ADOPTION OF THE CODE OF PROFESSIONAL RESPONSIBILITY

Depending strictly upon codes means that our ethical substance remains paper-thin, subject to technical manipulation and authoritative amendment. But as anyone who has written a contract can testify, it is impossible even for a god to anticipate every circumstance, to cover every base.

Benjamin Sells
The Soul of the Law

25. Code of Professional Responsibility, Canon 12 (1988).
26. *Id.* Rule 16.04.
27. Code of Professional Responsibility, Canons 17 & 18 (1998).
28. 1 BOUVIER'S LAW DICTIONARY 1086 (8d ed. 1914).

A. The Practice of Law

Perhaps the most significant, albeit controversial, decisions promulgated by the Supreme Court after the adoption of the CPR is the adoption of the "modern concept" of the practice of law. Earlier, the Court had held that "the word(sic) practice of law implies the customary or habitual holding of oneself to the public as a lawyer and demanding compensation for his legal services."[29] Under that definition, the mere possession of knowledge of the law is not sufficient. There must be an actual performance or application of the knowledge of law. In fact, practice of law was then associated with court appearances, preparation of pleadings, and other customary documents.

Cayetano v. Monsod came afterwards.[30] Over several strong dissents,[31] the Supreme Court held in that landmark case that "the practice of law means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience."[32] "To engage in the practice of law is to perform those acts which are characteristics of the profession."[33]

As if to highlight its adherence to the modern concept of the practice of law, the Supreme Court similarly held in *Ulep vs. Legal Clinic*[34] that

> [g]enerally, to practice law is to give advice or render any kind of service that involves legal knowledge or skill. The practice of law is not limited to the conduct of cases in court. It includes legal advice and counsel, and the preposition of legal instruments and contracts by which legal rights are secured, although such matter may or may not be pending in a court.[35]

These rulings of the Supreme Court have broadened the traditional concept of lawyering, doing away with the notion of the lawyer as a mere "man of the court."

29. People v. Villanueva, 14 SCRA 111, 112 (1965).
30. 201 SCRA 210 (1991).
31. Justice Cruz claimed that the definition given was too sweeping a determination, with one not even having to be a lawyer. While Justice Padilla reasoned that the practice of "any profession refers to the actual application of knowledge as distinguished from mere possession of knowledge in a habitual manner." Justice Gutierrez provided that "practice envisions an active and regular, committed participation in some thing which is the result of one's decisive choice; not an isolated, occasioned, accidental, intermittent, incidental and seasoned participation."
32. *Id.* at 214.
33. *Id., citing* 111 A.L.R. 23.
34. 223 SCRA 378 (1993).
35. *Id.* at 396.

B. *Conflict of Interest*

Whether under the CPE[36] or the CPR,[37] a lawyer has always been prohibited from representing conflicting interests. The exception to this prohibition is when all the parties concerned give their written consent after full disclosure of facts.[38] What is interesting to note is the development of the concept of conflict of interest.

The CPE provides that there is conflict of interest if an inconsistency in the interests of two or more opposing parties exists. The CPE provides that "[a] lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."[39]

The Supreme Court has held that the test to determine whether there is a conflict of interest in the representation is the *probability,* and not certainty, of conflict.[40] The proscription against representation of conflicting interests applies although the lawyer's intentions and motives were honest and his actions were in good faith.[41]

> A lawyer is prohibited from representing conflicting interest not only because his relationship with his client is one of trust and confidence of the highest degree, but also because good taste and public policy demand the same. To disregard this proscription would undoubtedly cause the entire profession to suffer.[42]

In another important case, *Regala v. Sandiganbayan,*[43] the Supreme Court held that the relationship of an attorney and his client is much more than that of an agent and principal. "In modern-day perception of the lawyer-client relationship, an attorney is more than a mere agent or servant, because he possesses special powers of trust and confidence reposed on him by his client."[44] The Highest Tribunal went on to say:

> Thus, in the creation of lawyer-client relationship, there are rules, ethical conduct and duties that breathe life into it, among those, the fiduciary duty to his client which is, of a very delicate, exacting and confidential character, requiring a very high degree of fidelity and good faith, that is required by reason of necessity and public interest based on the hypothesis that abstinence from seeking legal advice in a good cause is an evil which is fatal to the administration of justice.[45]

36. Canons of Professional Ethics, Canon 6 (1946).
37. Code of Professional Responsibility, Canon 15 (1988).
38. Code of Professional Responsibility, Rule 15.03 (1988).
39. Canons of Professional Ethics, Canon 6 (1946).
40. Code of Professional Responsibility, Canon 15 (1988).
41. Nakpil v. Valdez, 286 SCRA 758, 773 (1998).
42. *Id.* at 771. The proscription against representation of conflict of interests finds application where the conflicting interests arises with respect to the same subject matter and is applicable however light such adverse interest maybe. It applies although the attorney's intentions and motives were honest and he acted in good faith.
43. Regala v. Sandiganbayan, 262 SCRA 122 (1996).
44. *Id.* at 138.

C. *Privileged Communication: Identity of Client*

Noteworthy, as well, in *Regala* is the Court's ruling on whether a lawyer may invoke the rule on privileged communication by refusing to divulge the name or identity of his client. Rule 15.03 of the CPR provides that "a lawyer shall be bound by the rule on privileged communication in respect on matters disclosed to him by a prospective client."[46]

Applying and interpreting that Rule, the Supreme Court said that "[a]s a matter of public policy, a client's identity should not be shrouded in mystery. Under this premise, the general rule in our jurisdiction as well as in the United States is that a lawyer may not invoke the privilege and refuse to divulge the name or identity of his client."[47] Among the reasons given for the rule, the Court said that the privilege generally attaches only after the attorney-client relationship has been established,[48] and this necessarily means identifying the client entitled to the privilege.

Notwithstanding the considerations giving rise to the general rule, the Court further held that there are exceptions to the rule that a lawyer cannot refuse to name his client. Thus, a lawyer may not be compelled to reveal his client's identity under the following conditions:

1. Where a strong probability exists that revealing the client's name would implicate that client in the very activity for which he sought the lawyer's advice;
2. Where disclosure would open the client to civil liability;
3. Where the government's lawyers had no case against an attorney's client unless, by revealing the client's name, the said name would furnish the only link that would form the chain of testimony necessary to convict an individual of a crime.[49]

45. *Id.* at 138-39.
46. Code of Professional Responsibility, Canon 15 (1998).
47. *Regala,* 262 SCRA at 141.
48. *See id.* The Court gave the following reasons for the Rule: first, the court has a right to know that the client whose privileged information is sought to be protected is flesh and blood. Second, the privilege begins to exist only after the attorney-client relationship has been established. The attorney-client relationship does not attach until there is a client. Third, the privilege generally pertains to the subject matter of the relationship. Finally, due process consideration requires that the opposing party should as a general rule know his adversary. *Id.* at 142.
49. *See id.* at 142-47.

Considering that the same case had several strong and persuasive dissents by learned and scholarly members of the Highest Tribunal,[50] it will be interesting to observe if the *Regala* ruling will remain intact in the future.

D. Lack of Good Moral Character as a Ground for Sanction

In *Figueroa v. Barranco, Jr.*,[51] the Supreme Court emphasized that in order for an act complained of to justify suspension or disbarment on ground of lack of good moral character, such must not only be immoral, but *grossly* immoral. In this case, the High Court held that the acts of respondent lawyer in engaging in pre-marital sexual relations with complainant, as well as promises to marry, might suggest a doubtful moral character on his part. Interestingly, the Court did not consider these acts as constituting grossly immoral conduct that would warrant the imposition of disciplinary sanction, even if as a result of such relationship a child was born out of wedlock.[52] According to the Court,

> a grossly immoral act is one that is so corrupt and false as to constitute a criminal act or so unprincipled or disgraceful as to be reprehensible to a high degree. It is a willful, flagrant or shameless act which shows a moral indifference to the opinion of respectable members of the community. [53]

E. Purchase of Subject Matter of Litigation

The CPE expressly and categorically states that "[t]he lawyer should not purchase any interest in the subject matter of the litigation of which he is conducting."[54] The CPR, on the other hand, does not contain any similar prohibition, although the Civil Code provides that any such sale is void.[55] Thus, in *Bautista v. Gonzales*,[56] when a lawyer did in fact purchase such property and was sought to be disciplined, he argued that notwithstanding the void character of the sale, such purchase is no longer a ground for disciplinary action as it has been omitted under the CPR.

The Supreme Court brushed aside that argument, and held:

> The very first Canon of the new Code states that "a lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal process." Moreover, Rule 138, Sec. 3 of the Revised Rules of Court requires every lawyer to take an oath to "obey the laws [of the Republic of the Philippines] as well as the legal orders of the duly constituted authorities therein." And for any violation of this oath, a lawyer may be suspended or disbarred by the Supreme Court. All of these underscore the role of the lawyer as the vanguard of our legal system. The transgression of any provision of law by a lawyer is a repulsive and reprehensible act which the Court will not countenance. In the instant case, respondent, having violated Art. 1491 of the Civil Code, must be held accountable both to his client and to society. [57]

Parenthetically, it should be noted that the persons mentioned in Art. 1491 of the Civil Code are prohibited from purchasing the property mentioned therein because of their existing trust relationship with the latter. A lawyer is disqualified from acquiring by purchase the property and rights in litigation because of his fiduciary relationship with such property and rights, as well as with the client. Thus far, it cannot be claimed that the CPR has failed to emphasize the nature and consequences of such relationship. Canon 17 states, "a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him."[58] On the other hand, Canon 16 provides, "a lawyer shall hold in trust all moneys and properties of his client that may come into his possession." [59] Notwithstanding the absence of a specific provision on the matter in the new Code, the Court, considering that these provisions of the new Code in relation to Art. 1491 of the Civil Code and prevailing jurisprudence, held that the purchase by a lawyer of his client's property in litigation constitutes a breach of professional ethics for which a disciplinary action may be brought against him.[60]

F. The Lawyer's Oath

The nature of a lawyer's oath was one of the issues expounded on by the Supreme Court in *Santos v. CFI of Cebu*.[61] In that case, it was clearly shown that respondent lawyer, to justify a postponement of a hearing, lied by claiming that he was to attend the funeral of his father who, in fact, had died several years earlier. The lawyer further testified falsely about his personal circumstances. In ordering the lawyer's suspension for about six (6) months, the High Tribunal reasoned:

> A lawyer is called upon by virtue of his oath to do no falsehood nor consent to the doing of any in court. As an officer of the court, it is his sworn and moral duty to help maintain and not destroy the high esteem and regard towards the court so essential to the proper administration of justice. A lawyer's oath is one impressed with the utmost seriousness. It must not be taken lightly. Every lawyer must do his best to live up to it. [62]

50. *See id.* at 160 (Davide, J., dissenting) & 174 (Puno, J., dissenting).
51. 276 SCRA 445 (1997).
52. *Id.* at 449.
53. *Id.*
54. Canons of Professional Ethics, Canon 10 (1988).
55. CIVIL CODE, art. 1491.
56. 182 SCRA 151 (1990).
57. *Id.* at 160.
58. Canons of Professional Responsibility, Canon 17 (1998).
59. *Id.* canon 16.
60. *Bautista*, 182 SCRA at 161.
61. 185 SCRA 472 (1990).
62. *Id.* at 488.

Recently, in *Sebastian v. Calis*,[63] it was reiterated that a lawyer's oath is a sacred trust that must be upheld and kept inviolable, as these are not mere facile words, drift and hollow.[64] Thus, in another case, the fact that the lawyer was acting as a witness and not as a lawyer did not free him from the disciplinary authority of the court, as

> [a]n attorney will be removed not only for malpractice and dishonesty in his profession, but also for gross misconduct not connected with his professional duties which shows him to be unfit for the office and unworthy of the privilege which his license and the law confer upon him. Generally, any misconduct on the part of a lawyer in his professional or private capacity, which shows him to be wanting in moral character, may justify his suspension or removal from office even though the law does not specify the act as a ground for disciplinary action. [65]

G. Disbarment Proceedings

Finally, recent jurisprudence on Legal Ethics has further elucidated the nature of disbarment proceedings. In the earlier cases of *Pena v. Andrada*,[66] and *Luyon v. Atencia*,[67] the Supreme Court had ruled that a complainant's lack of interest in the prosecution of the respondent may justify the dismissal of the case. Such no longer holds true in the present, as the Court in a more recent case held that:

> [A] proceeding for suspension or disbarment is not in any sense a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary action proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice. Hence, if the evidence on record warrants, the respondent may be suspended or disbarred despite the desistance of complainant or his withdrawal of the charges. [68]

The quoted ruling amplifies the earlier pronouncement in *De Vera v. Commissioner Pineda*[69] that a disbarment proceeding is *sui generis*, or in a class by itself. It is neither a civil nor a criminal proceeding; rather, it is a matter of public policy and public interest. As the practice of law is inseparably connected with its exercise of judicial powers in the administration of justice,

63. 314 SCRA 1 (1999).

64. *Id.* at 7.

65. *Santos*, 185 SCRA at 488.

66. 91 SCRA 549 (1979).

67. 77 SCRA 1 (1977).

68. Rayos-Omboc v. Rayos, 285 SCRA 93, 100-01 (1998).

69. 213 SCRA 434 (1992).

the Supreme Court cannot be divested the authority to discipline, disbar or suspend any unfit or unworthy member of the Bar by a mere execution of an affidavit of desistance or quitclaim. Complainants in disciplinary proceedings have no interest except as good citizens in the administration of justice.[70]

CONCLUSION

Like any other calling, the legal profession has, and adheres to, its own deontology — a set of codes governing its practice. The new Code of Professional Responsibility has provided lawyers a clear guide of what is demanded from them by the courts, their clients, the profession, and society. This should not, however, be taken as the only gauge as to what is ethical and what is required of a member of the Bar. While the framers of the CPR have made its provisions broad enough to cover every possible act of indiscretion by a lawyer, the Code should be viewed as constituting only one source of ethical considerations. Such must be coupled with the rulings of the Supreme Court, as the body vested with the power and responsibility of regulating the legal profession, applying fundamental rules of legal ethics to new and complex situations arising from the practice of law. An overly restrictive use of the CPR will inevitably lead to recalcitrant Legal Ethics.

70. *See* Cruz v. Jacinto, 328 SCRA 636 (2000).